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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,908	07/21/2003	Paul John Kawula	50623.245	5357

7590 04/09/2007  
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San Francisco, CA 94111

EXAMINER
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PELLEGRINO, BRIAN E

ART UNIT	PAPER NUMBER
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3738

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/09/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/623,908	KAWULA, PAUL JOHN	
	Examiner	Art Unit	
	Brian E. Pellegrino	3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 6-46 is/are pending in the application.
- 4a) Of the above claim(s) 9-21, 24-26 and 30-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-8, 22, 23 and 27-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's AF submission filed on 12/4/06 has been entered.

### ***Information Disclosure Statement***

Applicant should note that the large number of references cited in the IDS filed for this application have been considered by the examiner in the same manner as other documents in Office search files are considered by the examiner while conducting a search of the prior art in a proper field of search. **See MPEP 609.05(b)**. Applicant is requested to point out any other particular references in the IDS which they believe may be of particular relevance to the instant claimed invention in response to this office action.

***Specification***

The disclosure is objected to because of the following informalities: reference character "120" has been used (page 10, lines 15,18-20) to designate both *ceramic component* and *metallic surfaces*. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 6,7,22,27-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Brandau et al. (6709379). Fig. 5a shows a metal substrate layer 2, an oxide layer 6 on the metal substrate. Brandau discloses the implant can be a metal stent, col. 7, line 18. Brandau additionally discloses different oxide layers to cover the stent such that there are two oxide layers, col. 8, lines 18-23. Brandau also discloses a drug 5 (col. 7, line 31) can be used with a ceramic layer, col. 8, lines 25-28. Brandau also discloses the implant can have an oxide layer and a ceramic layer, col. 3, lines 26-28. It is inherent for the ceramic layer to include first and second porous regions because the region required to bond the ceramic to the metal oxide needs to be porous or similar. The nonattached region would be more porous since there is no combination of materials adhered together.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 8,23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brandau et al. '379 in view of Alt (6099561). Brandau is explained above. However, Brandau fails to disclose an alternative drug for use in the cavities of the implantable device or specific types of metals used for stents. Alt discloses that drugs can be incorporated with ceramic coated stent implants, col. 10, lines 42-61. Alt additionally teaches various metals, such as steel for making stents, col. 7, lines 44-49. It would have been an obvious expedient to one of ordinary skill in the art to utilize steel for the stent as taught by Alt for the stent of Brandau et al. because of its abundance and radiopacity. Additionally, it would have been obvious to one of ordinary skill in the art to incorporate other types of drugs, such as anti-inflammatories as taught by Alt in the stent of Brandau such that it helps in preventing restenosis or inflammation of the vessel.

### ***Response to Arguments***

Applicant's arguments filed 12/4/06 have been fully considered but they are not persuasive. Applicant contends that one embodiment in the Brandau reference that shows a "covering" 14 is not ceramic. The Examiner noted that Brandau's stent does not require the "covering" 14, see col. 8, lines 61,62. Thus, the Examiner interprets the stent to include the oxide and ceramic combination disclosed at col. 3, lines 26-28. Applicant contends the covering mentioned by Brandau are not layers of an oxide and ceramic, however, the Examiner respectfully disagrees since it is inherent that metal oxides would adhere to the metal surface of the stent, thus forming a layer and the

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ceramic being a different material forms another layer. As mentioned above, an oxide layer must be between the ceramic's less porous region (area of attachment) since it is more porous than the stent metal material and provides the ability of bonding dissimilar materials.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Pellegrino whose telephone number is 571-272-4756. The examiner can normally be reached on M-Fr (8:30am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TC 3700, AU 3738



**BRIAN E. PELLEGRINO**  
**PRIMARY EXAMINER**